



THE MAINE CEO

A PERIODIC NEWSLETTER FOR
CODE ENFORCEMENT TRAINING & CERTIFICATION
PROGRAM INFORMATION

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Protection for Code Enforcement Officers and Local Plumbing Inspectors

Important Meeting

On February 14, 2002, Code Enforcement Training & Certification Program staff met with Rich Baker, DEP- Shoreland Zoning, Russell Martin, DHS-Division of Health Engineering, Frank Hample, SPO-Comprehensive Planning, and two Maine *Assistant Attorneys General* – Jan McClintock and Paul Gauvreau.

The topic of the discussion was state government's role in the protection of *local plumbing inspectors* and *code enforcement officers* enforcing the Maine State Plumbing Code and municipal shoreland zoning ordinances.

This meeting was called as a result of several calls to the State Planning Office concerning the inability of *code enforcement officials* to perform their duties. While not a wide spread issue, it seems to have increased over the past six months. The result of the meeting is discussed below and falls into two categories "Local Plumbing Inspectors" and "Shoreland Zoning Officers."

"Local Plumbing Inspectors"

Rule 10-144, Department of Human Services, Chapter 240: Appointment and administration of Local Plumbing Inspectors, Section 7, paragraph B. 3. "Involuntary removal. An LPI may be removed from an appointment by the municipality/Department due to disciplinary action or failure to perform duties and powers adequately due to physical restrictions or incompetence, with due cause shown. If involuntarily removed, the LPI may request an administrative hearing as provided by the Maine Administrative Procedures Act, Title 5, Chapter 375 by writing to the Department within 20 days of removal from appointment."

In short, if you feel you were adequately performing your duties as an LPI and were dismissed due to your actions, you have the right to petition the Department of Human Services, Division of Health Engineering, within 20 days of your removal, and the Division will grant you a hearing. If it is found that you indeed were functioning within the parameters of the code, a written *finding-of-*

fact will be issued, and the municipality urged to rehire you. The *finding-of-fact* is a public document that you are free to use when seeking new employment.

“Shoreland Zoning Officers”

The shoreland zoning guidelines do not contain hearing process language. Documentation is the key and there must be an evident pattern of abuse. Since anyone can make a mistake, you must be able to document repetitive infractions. You must be able to document instances where accurate enforcement or permitting decisions you made were overturned or you were dismissed from service for adequately performing your duties as a CEO-Shoreland Zoning Officer, then Shoreland Zoning unit at DEP will investigate your complaint.

If you are currently working for a municipality, the Department will attempt to keep your complaint confidential. If it is found that you indeed were functioning within the parameters of the Shoreland Zoning guidelines, then the DEP can take action against the town for improperly administering its shoreland zoning ordinance. However, the Department has no authority to require the town to reinstate you as code enforcement officer. The Department cannot interfere with the town’s hiring/firing process.

What you can do

It was determined, by those at the meeting, that without statutory changes, State involvement is limited to that explained in the above paragraphs. Change is gradual. It starts by building strong associations like MBOIA, MCEOA, ACEO and MCAA.

Through professional association you enhance training opportunities, provide mentoring and support, and present a united voice at the Maine State Legislature. You have the experience and knowledge required to effect change within your profession.

“Change will come since no one has yet found a way to prevent or slow down the passage of time. Besides, those who will not accept change will be changed by the concept that they refuse to accept.”

Deputy Fire Chief (ret.) Connie O’Brien, Cambridge, MA Fire Department

BUILDING REHAB CODE UPDATE

In February, the State Planning Office issued its final report on the feasibility of a Maine Building Rehabilitation Code. The final report was presented to the *Joint Committee on Natural Resources* by SPO, in conjunction with *Maine Rehab Code Advisory Council*. Because the *Advisory Council* was adamant that a model building code must precede adoption of a rehab code, the *Natural Resources Committee* decided that it did not have legislative jurisdiction to act further on the matter. The issue of a state building code and a rehab code may surface again in the future, but until a new legislature is convened and the matter is taken up, this round of study and discussion is ended.

TRAINING ANNOUNCEMENT

Included with this newsletter is the announcement for the May workshops. The training will cover "*environmental issues related to development.*" It is a 2-day session, with DEP presenting on day #1 and DOT presenting on day #2. The DEP will cover these subjects: underground storage tank siting; asbestos/lead and backyard trash burning; junkyards and automobile graveyards; hazardous waste and waste oil; and universal waste. The DOT presentation will cover: access management rules and right-of-way encroachments. Registration forms are included with this newsletter mailing.

Please note Maine DEP Bureau of Remediation will be sending a survey form to all appointed code enforcement officers in the next few weeks. We ask that you please complete the survey and return as directed. The survey concerns junkyard-licensing issues and the information will help DEP improve its support to enforcement efforts. This matter will be discussed during the May training workshop.

PROGRAM IMPROVEMENTS

We have finally updated the basic information on our website. You should begin to make it a practice when you logon to periodically check the CEO Training Program web page. (Our Internet address or URL is: www.state.me.us/spo/ceo/ceohome.htm) We are moving closer to the point where we can begin to offer more services via our website. In the near future we will provide an *on-line newsletter* with up-to-minute information. We intend to put all of training manuals in "pdf" format so that you may download the latest edition. The first announcement for training workshops and other special planned events will be seen first on-line. You will be able to register for workshops and certification testing on-line. All program forms will be available on-line for easy download. While many will say they are happy with things the way they are, the reality is the world is changing. We understand that there are some of you without a computer or without Internet access. However, if you look you'll probably find you may obtain access at the local library. Email service for individuals is available even for those without a personal computer and Internet access. The Program will continue to provide its traditional service to those who require it. We are taking these steps for several reasons. The first reason, and perhaps the most important, is that it will save money. It is not simply saving money for the sake of saving money, but to spend it more wisely. The money we save will be used for improvements to existing training programs, development of new training programs, building training mock-ups, and hiring top-quality instructors to deliver our training programs. These are tough financial times in State government and it is not going to improve anytime soon. The program has not received a significant increase to its operations budget since the program's inception over 10 years ago. Could you survive without a pay increase for over 10 years? As always, we will continue to identify your code enforcement training needs and meet them with a top quality program.

QUESTIONS & ANSWERS...

Q: There are several members of our board of selectmen that interfere with my attempts to enforce the shoreland zoning regulations. The interference is not real obvious, but it does occur. I have been told, in no uncertain terms, that my future employment in this town is in jeopardy. I am told to try and just “get along” and not cause “problems” with camp owners at the lake or I won’t be around too much longer. The training I receive tells me that I have a duty to enforce the regulations and I have taken an oath of office to that effect. All I want to do is the right thing, but I have a family to support and I need the paycheck. What am I supposed to do?

A: While your case is one of the extreme ones, almost all code officers will face a situation with similar overtones. There is strong sentiment among some Maine towns and cities that interference by the State must be resisted. It is common to hear someone say, “We don’t need bureaucrats from Augusta telling us how to run our town.” At one time or another, we may all agree with that sentiment, however, some take their “resistance” to the extreme. You are literally between the rock and a hard place. You’re just trying to do your job and yet at the same time you need the economic security that the very job provides. Your case is not the first and it won’t be the last.

Unfortunately, neither Maine Law nor DEP’s Administrative Rules offer you much protection. If harmed, to the extent of being slandered, or worse dismissed, your recourse is limited to those *due process* protections afforded under local agency personnel rules or policy; or, in the extreme filing a civil action suit against your employer. Either way, it may be advisable to seek legal counsel. Whereas DHS/Health Engineering Division rules for *plumbing inspectors* provides for a *due process* hearing, Maine DEP Administrative Rules do not provide such a hearing for municipal *shoreland zoning officers*. This means you are essentially on your own in this regard. As a code officer who enforces *shoreland zoning* you must take steps to protect yourself.

If a pattern of abuse or interference with the performance of your sworn duties is evident, or if retribution (obvious or subtle) is taken against you and it affects your vested rights as an employee you will have to provide the necessary evidence to support your case. Documentation of your enforcement action is critical to any defense you put forth. You must be able to document that your enforcement efforts were thwarted by repetitive interference or abuse by your employer. Any harm incurred by you personally for attempting to enforce the law must be demonstrated. As *shoreland zoning officer*, your only avenues of recourse will be through local administrative channels or a civil suit. Your other choice is to accept the situation.